

This information sheet gives organisations general guidance about requesting an exemption from commencing or further investigation of a Reportable Conduct notification. This sheet complements [Information Sheets 1 to 4](#) which provide an overview of the Reportable Conduct Scheme (**the Scheme**), identifying reportable conduct and the responsibilities of the heads of organisations.

What is an exemption?

In some instances, after submitting a notification to the Ombudsman, your organisation may receive further information which leads you to form the view that an exemption should be sought from commencing an investigation or from further investigation.

Section 19P of the *Parliamentary Commissioner Act 1971* (**the Act**) allows for the Ombudsman to grant an exemption from commencing or conducting a further investigation under the Scheme to an organisation where the head of an organisation requests him to do so.

Exemptions may be granted by the Ombudsman for a specified period or indefinitely and may be revoked at any time.

Where an organisation is granted an exemption by the Ombudsman, the organisation is not required to commence an investigation, or continue investigating the reportable allegation or conviction unless the specified period ends, or the exemption is revoked.

It is important to note that each request for exemption will be considered on its individual merits, and the Ombudsman has discretion as to whether an exemption is granted. In all applications for an exemption, the Office of the Ombudsman's paramount consideration is the best interests of the child.

When can I apply for an exemption?

Under section 19Y(1) of the Act, and following a notification, you may request an exemption if you:

- A.** have formed the view on reasonable grounds that:
- (i) the matter is not reportable conduct; or
 - (ii) the report of the matter to the Ombudsman is frivolous or vexatious or not made in good faith;

OR

- B.** become aware that another appropriate person or body is dealing with or investigating the matter (for example: the Western Australia Police Force or the Department of Communities);

OR

- C.** are required by law to comply with the directions of another person or body in relation to the investigation of the matter;

OR

- D.** are requested or directed by another appropriate person or body to cease, or discontinue for a period, the investigation of the matter.

The matter is not reportable conduct (section 19Y(a)(i))

Under section 19Y(1)(a)(i) of the Act, you can request an exemption if you believe that the reportable allegation or conviction notified to the Ombudsman does not meet the definition of 'reportable conduct' under the Act.

Under the Act, 'reportable conduct' includes:

- (a) a sexual offence;
- (b) sexual misconduct;
- (c) physical assault committed against, with or in the presence of, a child;
- (d) significant neglect of a child; and
- (e) behaviour that causes emotional or psychological harm to a child.

However, reportable conduct does not include conduct that is:

- (a) reasonable for the discipline, management or care of a child or of another person in the presence of a child (section 19G(2)(a));
- (b) trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure (section 19G(2)(b)); or
- (c) of a class or kind exempt by the Ombudsman from being reportable conduct.

For further information about identifying reportable conduct, see [Information Sheet 3 – Identifying Reportable Conduct](#).

(a) Reasonable for the management, care or discipline of a child or another person in the presence of a child (section 19G(2)(a))

Section 19G(2)(a) of the Act, deals with conduct that is reasonable for the discipline, management or care of the child. Where a notification has been made and an organisation subsequently determines that the conduct was reasonable for the management, care or discipline of a child in accordance with the terms of section 19G(2)(a) of the Act, it may request an exemption from investigating or continuing an investigation.

To support any requests for exemption under this provision, organisations may wish to provide:

- evidence as to the nature of any physical force;
- documentation of any relevant codes of conduct or applicable policies; and
- information to address the characteristics of the child, including: their age, health, and any behaviour plans for the child in question.

(b) Trivial or negligible and has been investigated and recorded as part of another workplace procedure (section 19G(2)(b))

Section 19G(2)(b) of the Act deals with conduct that is 'trivial' or 'negligible'. Where a notification has been made and an organisation subsequently forms a view that the conduct was trivial or negligible, it may request an exemption from investigating or continuing an investigation, provided that the matter has also been or will be investigated and recorded as part of another workplace procedure.

When forming a view as to whether an exemption is appropriate on the grounds that the alleged conduct is not reportable conduct because it is trivial or negligible, the Office of the Ombudsman will consider the following factors (amongst any other relevant factors):

- whether the alleged conduct, if it was proven, can be considered trivial or negligible even if more evidence would need to be collected to prove whether the conduct did or did not occur;
- whether the alleged reportable conduct was a physical assault or sexual misconduct;
- what further investigative actions could reasonably be taken;
- any insight demonstrated by the employee into the behaviour that is the subject of the alleged reportable conduct;
- any previous complaints, allegations or findings made in relation to the subject of the allegations;
- that there has been a restorative process with the child and/or the persons with parental responsibility over the child; and
- if there are meaningful actions being taken through the other workplace procedure.

The report of the matter is frivolous or vexatious or not made in good faith (section 19Y(1)(a)(ii))

Section 19Y(1)(a)(ii) of the Act outlines that:

- (1) *The head of a relevant entity must, as soon as practicable, notify the Commissioner if, in relation to a matter being investigated under section 19W(1), the head of the relevant entity —*

- (a) *forms the view on reasonable grounds that —*

...

- (b) *the report of the matter to the relevant entity under section 19T is frivolous or vexatious or not made in good faith*

Where the head of an organisation considers a matter to be suitable for exemption as it is frivolous or vexatious or not made in good faith, they should provide a notice to the Ombudsman in accordance with section 19Y(3) of the Act.

Another appropriate person or body is dealing with or investigating the matter (sections 19Y(1)(b)-(d))

Section 19Y(1)(b) to (d) of the Act outlines that:

- (1) *The head of a relevant entity must, as soon as practicable, notify the Commissioner if, in relation to a matter being investigated under section 19W(1), the head of the relevant entity —*

...

- (b) *becomes aware that another appropriate person or body is dealing with or investigating the matter; or*
- (c) *is required by law to comply with the directions of another person or body in relation to the investigation of the matter; or*
- (d) *is requested or directed by another appropriate person or body to cease, or discontinue for a period, the investigation of the matter.*

Where the head of an organisation considers an exemption to be appropriate because another person or body such as the Western Australia Police Force, the Courts or the Department of Communities is addressing or investigating the matter, the organisation should notify the Ombudsman, as soon as practicable by providing notice to the Ombudsman in accordance with section 19Y(3) of the Act.

In your notice, you may wish to request an exemption from commencing or further investigating however, depending on the circumstances, it may be more appropriate for the head of the organisation to consult with the other relevant person or body under section 19ZG of the Act, to determine whether a suspension of the investigation or any other action is required. For further information on consulting with other agencies and suspensions of investigations, refer to [Information Sheet 12](#).

How do I apply for an exemption?

A request for an exemption should be provided to the Ombudsman in accordance with section 19Y(3) of the Act by:

1. being in writing;
2. outlining which section of the Act the head of the organisation or their delegate is seeking an exemption under; and
3. containing enough information to support the request for exemption including the specific information as to how the particular section of the Act has been met and any relevant evidence.

What happens if my exemption is declined or revoked?



If your exemption request is declined or revoked, the head of the organisation remains responsible for completing an investigation in accordance with section 19W of the Act and, once complete, is required to submit a final report addressing the requirements of section 19Z to the Ombudsman.

For further information about what is required as part of an investigation and what information should be submitted to the Ombudsman after an investigation has been completed, refer to [Information Sheet 8 – Reportable Conduct Investigations](#).

Will the Ombudsman tell me if I should request an exemption?

Yes, on occasion, the Ombudsman may invite an organisation to request an exemption where there is information indicating that any of the circumstances outlined in section 19Y(1) of the Act, may apply.

An invitation to request an exemption may also include a request for additional information to assist the Office of the Ombudsman in its consideration of the appropriateness of an exemption in the circumstances.

It is important to note, that an invitation to request an exemption does not guarantee that any request subsequently made will be granted as circumstances may change and additional information may arise, which may mean that an exemption is no longer appropriate.

Where to get help

Organisations covered by the Scheme should contact the Ombudsman for clarification and guidance, and to talk through any issues of concern.

- Telephone: (08) 9220 7471
- Email: reportableconduct@ombudsman.wa.gov.au
- Website at www.ombudsman.wa.gov.au

